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IN THE

Supreme Court of the United States

October Term 1984

HELEN M. RANDLES,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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ATTORNEYS FOR
PETITIONER

QUESTIONS PRESENTED FOR REVIEW:

I.

Whether the Trial Judge was clearly erroneous in finding that the Plaintiff was not in custody at time of alleged confession.

II.

Whether the Trial Judge erred in concluding the limited waiver of Petitioner's Miranda as well as Petitioner's other Fifth Amendment and Sixth Amendment rights as provided by the United States Constitution carried over to later custodial interrogation.

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NO._____

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October Term 1984

HELEN M. RANDLES, Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

INTRODUCTION

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Helen M. Randles, the Petitoner herein, prays that a Writ of Certiorari issue to review the Judgment and Orders of the United States Court of Appeals for the Sixth Circuit entered in this matter on May 16, 1985.

JURISDICTION

The Judgment and Order of the United States Court of Appeals were entered and filed May 16, 1985. Jurisdiction of this Court is pursuant to 28 U.S.C., Section 1254(1).

OPINION BELOW

The Court of Appeals entered its decision on May 16, 1985 affirming the decision of the District Court which denied Petitioner's Motion for New Trial and affirmed her conviction on mail fraud and conspiracy to commit mail fraud. The original conviction was on October 5, 1984 in the District Court for the Eastern District of Tennessee. The Opinion of the Court of Appeals is attached as the Appendix.

STATEMENT OF THE CASE

On May 4, 1984, Petitioner was to meet with Agents of the Federal Bureau of Investigation to take a polygraph test concerning Petitioner's possible involvement in a mail fraud conspiracy. The meeting was rescheduled due to inability of Petitioner to contact her counsel. After consulting her counsel, Petitioner met with agents on May 11, 1984 for the sole purpose of submitting to a polygraph examination, intending to leave immediately after the examination. Just prior to submitting to the Polygraph, Petitioner executed a Consent to Inter view With Polygraph and Interrogation; Advice of Rights.

Only one agent was present during the administration of the polygraph examination. At approximately 12:00 p.m., the polygraph examination was concluded. At that time, Petitioner asked the agent if she could leave. The agent said, "No", he wanted to call in another agent. He also told her that she had failed the test. After approximately thirty (30) minutes, the second agent came in and interrogated Petitioner until approximately 3:45 p.m. (Interrogation lasting 2½-3 hours) Petitioner was never informed of her Fifth or Sixth Amendment rights during the interrogation after the polygraph exam. During this post-polygraph interrogation, an alleged oral confession was obtained although it was

not recorded or documented in any manner. Petitioner was later indicted on Federal Mail Fraud and Conspiracy to Commit Mail Fraud and subsequently convicted of such charges based upon the alleged confession. Petitioner made a Motion to Suppress said confession due to a denial of her Fifth and Sixth Amendment rights and failure of the agents to reapprise her of her Miranda rights.

REASONS FOR GRANTING THE WRIT

1. To settle a conflict between other Appellate Circuits and the Sixth Circuit as to what constitutes a "custodial interrogation". United States v. Constantine, 296 U.S. 287 (1935).

2. To settle a conflict between other Appellate Circuits and the Sixth Circuit as to when a waiver of Miranda rights will carry over after a polygraph test. United States v. Constantine, 296 U.S. 287 (1935).

3. Petitioner contends that effective administration of criminal justice requires the Supreme Court to decide the issues presented in this case. See: Carbo v. United States, 364 U.S. 611 (1961).

These reasons are stated pursuant to Rule 17 of the Supreme Court Rules.

UNITED STATES CONSTITUTION, AMENDMENT V

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

UNITED STATES CONSTITUTION, AMENDMENT VI

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

DISCUSSION

1. Confusion exists in the legal definition as to when an accused is "in custody". In Wyrick v. Fields, 459 U.S. 42 (1982), this Court hel that if circumstances so changed after a polygraph test "that his answers were no longer voluntary or . . . he was no longer making a knowing and intelligent relinquishment or abandonment of his rights" the accused may need to be reapprised of his Miranda rights.

In United States v. Gillyard, 726 F.2d 1426 (9th Cir. 1984), the Court of Appeals affirmed a trial court finding that Defendant was in custody despite facts that Defendant did not ask if he

could leave nor was he restrained.

In the case sub judice, Petitioner asked Federal Bureau of Investigation Agents if she was free to leave and was told no, yet the Trial Court found that she was not in custody. Furthermore, Petitioner testified she did not think or feel she was free to leave, and in fact, did not leave or contact counsel until after the alleged confession. Petitioner, therefore, asks the Supreme Court to set the proper standard for determining the existence of custody.

2. Confusion exists between courts concerning the circumstances allowing a waiver of Miranda rights to carry over after a polygraph test. In Gillyard, supra, Defendant was found not to have

waived his post polygraph rights by executing a polygraph waiver when a post-polygraph interrogation was performed by persons other than the polygraph examiner.

The Trial Court sub judice found Petitioner had waived her rights despite the fact she was informed only of the intended polygraph test and not of the post-test interrogation at the time she signed the Advice of Rights and Consent to Polygraph forms. It is important to note the extreme change of circumstances in this case between polygraph questioning and post-polygraph questioning. Post-polygraph questioning was performed by a different Federal Bureau of Investigation Agent, the case

agent, after the polygraph operator had concluded his work but before Petitioner had an opportunity to contact her lawyer whose involvement in the case was known to both the Federal Bureau of Investigation Agent.

The Supreme Court could here clarify the standard concerning waivers of Miranda rights. United States v. Embassy Restaurant, Inc., 359 U.S. 29 (1959).

3. The confusion on these issues creates for ineffective administration of criminal justice. This situation requires the Supreme Court to clarify the issues presented in this case. See: Carbo v. United States, 364 U.S. 611 (1961).

CONCLUSION

For the foregoing reasons, Petitioner, Helen M. Randles, respectfully requests that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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APPENDIX

A

No. 84-5922

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

HELEN M. RANDLES,
Defendant-Appellee.

ON APPEAL from the United States District Court for the Eastern District of Tennessee.

Decided and Filed _____

BEFORE: LIVELY, Chief Judge, MARTIN, Circuit Judge; and TIMBERS, Senior Circuit Judge*.

PER CURIAM. The Defendant appeals her jury conviction for conspiracy and engaging in a scheme to defraud and obtain money by false pretenses involving use of the mails. She made a pretrial motion to suppress alleged incriminating statements which the government claimed she made after taking a polygraph examination. At the suppression hearing the defendant testified that she agreed to take a polygraph test after being told

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*The Honorable William H. Timbers, Senior Circcuit Judge, United States Court of Appeals for the Second Circuit, sitting by designation.

that alleged co-conspirators had implicated her in the scheme and after consulting with her attorney. She also testified that before taking the examination she signed two waiver forms, one a consent to an interview with polygraph and the other a standard form setting forth her "Miranda" rights. She testified that after the polygraph examination was completed the examiner told her that the results indicated that she had not told the truth and asked her to explain. She said that she asked the examiner if she was free to go and that he said that she was not free to leave until they discussed the results of the examination.

At the conclusion of the suppression hearing the district court

made a finding that the defendant had no reasonable belief that she was in custody at the time of the alleged statements and that any statements she made were not in response to custodial interrogation. The court went on to find that even if her statements were made in response to custodial interrogation the defendant had been advised of her right to remain silent and her right to an attorney and had voluntarily waived these rights prior to making any incriminating statements.

At the trial the defendant denied making any statements which implicated her in the scheme to defraud, but both the polygraph examiner and an FBI agent testifed that she admitted her participation during the discussions following

the polygraph examination and there was also testimony that she made a similar incriminating statement approximately one month later.

On appeal the defendant contends that testimony concerning her alleged statements should have been suppressed because the two waiver forms she signed before taking the polygraph examination applied only to that examination and she was entitled to a second "Miranda" warning before the questioning which took place after the polygraph examination concluded. She argues that any interrogation by the FBI agent, who was not present when she was advised of her rights and signed the two consent forms but came into the room after the examination

was completed, was not covered by the consents she gave. She also makes much of the fact that the alleged statements were not recorded or otherwise immediately memorialized.

Upon consideration of the briefs and oral arguments of counsel together with the record on appeal, this court concludes that the district court did not err in denying the motion to suppress defendant's statements. The finding of fact by the district court that the defendant had no reasonable grounds to believe that she was in custody at the time she made the statements is not clearly erroneous. Further, even if the defendant was in custody, the waiver which she executed prior to the polygraph

examination would carry over and cover "post-test" questioning, unless the circumstances changed so seriously that [her] answers no longer were voluntary, or unless [she] no longer was making a 'knowing and intelligent relinquishment or abondonment' of [her] rights". Wyrick v. Fields, 459 U.S. 42, 47 (1982), quoting Edwards v. Arizona, 451 U.S. 477, 482 (1981). No such change of circumstances was shown.

The judgment of the district court is affirmed.

ISSUED AS MANDATE: JUNE 7, 1985
COSTS: NONE

CERTIFICATE OF SERVICE

I, W. Zane Daniel, hereby certify that three (3) true and correct copies of the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit has been personally served upon the District Attorney General for the United States of America, Eastern District of Tennessee, in compliance with the Rules of the Supreme Court and the Federal Rules of Appellate Procedure this 9th day of July, 1985.

W. ZANE DANIEL
ATTORNEY FOR PETITIONER

Supreme Court, U.S.
FILED
OCT 25 [redacted]
JOSEPH F. SPANIOL, JR
CLERK

(2)

No. 85-51

In the Supreme Court of the United States

OCTOBER TERM, 1985

HELEN M. RANDLES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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BEST AVAILABLE COPY

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner challenges the concurrent findings of the courts below that she was not in custody at the time she confessed and that, even if she were, her earlier waiver of *Miranda* rights remained effective.

1. Following a jury trial in the United States District Court for the Eastern District of Tennessee, petitioner was convicted on three counts of mail fraud, in violation of 18 U.S.C. 1341, and one count of conspiracy, in violation of 18 U.S.C. 371. She was sentenced to concurrent terms of three years' probation and fined a total of $4,000. The court of appeals affirmed in an unpublished decision (Pet. App. A1-A6; 765 F.2d 147 (Table)).

The evidence at trial, the sufficiency of which is not in dispute, showed that petitioner conspired to stage the theft of her automobile in order to sell the car and also collect the

insurance proceeds. Unknown to the conspirators, however, the purchaser of the automobile was an undercover agent of the FBI. On the same day that her co-conspirators sold the car to the agent, petitioner reported that it had been stolen. She filed an insurance claim shortly thereafter and collected $9,000. See, *e.g.*, Tr. 93-122, 149-160, 233-235, 321-322, 368.

2. a. Prior to petitioner's indictment on June 14, 1984, her three co-conspirators pleaded guilty. Two of them implicated her in the crime, but the third, with whom she had lived for 15 years, denied that she was involved. FBI agent William Hindon interviewed petitioner in her office where, after being advised of her rights, petitioner denied advance knowledge of the theft (Tr. 227-228). Hindon asked at this meeting and a later one if petitioner would be willing to take a polygraph examination; he and another agent encouraged her to discuss the matter with her attorney (Tr. 49-50, 229-230). Petitioner agreed to take the test but later postponed the date because she "had not been able to talk to her attorney face to face" about it (Tr. 230).

On the rescheduled date of the examination, May 11, 1984, Agent Hindon met petitioner at the FBI office and introduced her to Agent Richard Racleff, the polygraph operator (Tr. 53). After Hindon left, Racleff explained to petitioner that the interview would cover her possible involvement in the staged theft (Tr. 314-315). He told her that "she was free to leave at any time" and that "if she needed to talk to [her attorney] at any time, she was free to call" (Tr. 316). Petitioner signed an advice-of-rights form and a consent to the polygraph examination (Tr. 34-35).

After the examination, which lasted approximately 75 minutes (Tr. 34-35), Hindon returned to the room and questioned petitioner further in Racleff's presence. She acknowledged that she had advance knowledge of the

staged theft, that she removed her personal items from the car the night before it was taken, and that she knew that a bogus insurance claim would be filed (Tr. 233-235, 320-322).

b. Following a hearing, the district court denied petitioner's motion to suppress the statement that she made immediately after the polygraph examination (C.A. App. 19). The court found that petitioner "had no reasonable belief that she was in custody" and that "[e]ven if [her] statements were made in response to custodial interrogation," petitioner was advised of her rights and "voluntarily waived [them] prior to making the incriminating statements." *Ibid.*, citing *Wyrick* v. *Fields*, 459 U.S. 42 (1982).

3. The court of appeals affirmed in an unpublished opinion (Pet. App. A1-A6). It upheld the district court's finding that petitioner was not in custody (*id.* at A5). It also agreed with the district court that, under this Court's decision in *Wyrick* v. *Fields*, *supra*, petitioner's pre-examination waiver was effective with respect to her post-examination statement because the surrounding circumstances had not significantly changed between the time that she waived her rights and when she confessed a short while later (Pet. App. A5-A6).

4. Petitioner contends (Pet. 9-12) that she was in custody when she made her statement to Hindon and Racleff and that the agents should have warned her again of her *Miranda* rights because of the "extreme change of circumstances" (Pet. 11) that transpired between her waiver before the polygraph interview and the subsequent questioning. These factbound claims were correctly rejected below. In view of the concurrent findings of the district court and the court of appeals, review by this Court is unwarranted. See, *e.g.*, *Berenyi* v. *District Director, INS*, 385 U.S. 630, 635 (1967).

Petitioner was not in custody for purposes of *Miranda* because she was not subjected to " 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest.' " *California* v. *Beheler*, 463 U.S. 1121, 1125 (1983), quoting *Oregon* v. *Mathiason*, 429 U.S. 492, 495 (1977). Petitioner had been neither charged nor arrested; she appeared voluntarily after consulting with counsel; and she was expressly advised, contrary to her testimony at the suppression hearing on which she now relies (Pet. 4, 10), that she was free to leave at any time (Tr. 316). *United States* v. *Gillyard*, 726 F.2d 1426 (9th Cir. 1984), cited by petitioner (Pet. 9), is not to the contrary. There, unlike here, the defendant was not represented by counsel and was not advised that he had the right to stop questioning and leave at any time (726 F.2d at 1428, 1429).

In any event, petitioner's express waiver of rights prior to the polygraph examination remained effective. Only a "serious[]" (*Wyrick* v. *Fields*, 459 U.S. 42, 47 (1982)) change of circumstances following conclusion of a polygraph examination can vitiate the validity of an earlier waiver: the Court expressly rejected in *Wyrick* (*id.* at 48-49) a per se rule requiring the police to readvise a "suspect of his rights before questioning him at the same interrogation about the results of [a] polygraph." Petitioner, like the defendant in *Wyrick* (*id.* at 44), waived her rights after being advised before the polygraph that she would be questioned about a specific crime and that she had the right to stop the questioning at any time. The continuation of questioning about the staged theft by Agent Hindon, who had arranged the polygraph, introduced petitioner to Agent Racleff, and took her statement in Racleff's presence immediately following the examination, hardly constitutes a change in circumstances so serious as to give rise to a requirement that new warnings be administered. Again, petitioner's reliance

(Pet. 10) on *United States* v. *Gillyard, supra,* is misplaced. There, unlike here, the defendant was not advised that he would be questioned about a specific crime and post-polygraph "accusatory questioning" was conducted by officers "who had nothing to do with the polygraph examination" (726 F.2d at 1429). Moreover, the court of appeals there held only that the district court's finding that the circumstances had changed sufficiently to require a new warning was not clearly erroneous; it stated that the district court could have found a valid waiver under the circumstances before it (*id.* at 1429-1430).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

OCTOBER 1985